

August 26, 2020

To: EPC Members

From: Richard Jacobson, EPC Staff

Re: EPC-05-2020, Joe Pagliarulo, 49 Sunswyck Road

I am offering the following comments as a guideline to reviewing the record during deliberations.

One point of confusion I would like to address is the location of the regulated wetlands and watercourses on the site. There is the wooded wetland to southwest, the location of which was made clear during the public hearing by Soil Scientist, Jay Fain. The intermittent watercourse to the northwest is defined as starting approximately 50' into the property from Sunswyck Road. The four inch discharge pipe and the water flowing from Sunswyck Road along the property line, as depicted in Ms. Hamilton Hall's film and photos is not a watercourse. Neither Doug DiVesta nor Jay Fain disputed that water flows overland into the actual watercourse during rainstorms.

Discussion points for deliberation:

The following are the decision criteria from the wetland regulations:

- a. the environmental impact of the proposed regulated activity on wetlands or watercourses;

To deny an application the Commission must make a finding that there will be a significant adverse impact to the wetlands or watercourse. The finding cannot be speculative, i.e., "the septic could fail" or "the drainage system won't be maintained by the homeowner".

The Applicant's engineer, Doug DiVesta, and environmental consultants, Matt Popp and Jay Fain, provided their expert opinions that there will not be an impact to wetlands or watercourses. There were two areas of the project, septic and storm water, where Steve Trinkhaus, P.E., testified that there was either not enough analysis to determine impacts or, in his opinion, the project does not meet DEEP standards and will likely have impacts. It was the opinion of Joe Canas, P.E., that the DEEP standards are not appropriate for either sewage disposal or storm water management on a residential lot in Darien, and that there would be no adverse impacts to wetlands. Mr. Canas provided suggestions for revisions that would make inspections of the storm water system easier and a condition of approval to require moving the pool on Lot #1 away from the detention system.

- b. the applicant's purpose for, and any feasible and prudent alternatives to, the proposed regulated activity which alternatives would cause less or no environmental impact to wetlands or watercourses.

The Applicant's stated purpose is to create two building lots. The initial plan was revised to move the house farther from the wetland, although no wetland impacts were determined at that time. Alternatives need only be addressed if there is an wetland impact that is not acceptable. Requiring an alternative that effectively denies the application would not be expected to withstand an appeal.

- c. the relationship between the short term and long term impacts of the proposed regulated activity on wetlands or watercourses and the maintenance and enhancement of long-term productivity of such wetlands or watercourses.

Unless the Commission finds there are direct wetland impacts, either short term or long term, there should be no change to the productivity of the wetland.

- d. Irreversible and irretrievable loss of wetland or watercourse resources which would be caused by the proposed regulated activity, including the extent to which such activity would foreclose a future ability to protect, enhance or restore such resources, and any mitigation measures which may be considered as a condition of issuing a permit for such activity including, but not limited to, measures to (1) prevent or minimize pollution or other environmental damage, (2) maintain or enhance existing environmental quality, or (3) in the following order of priority: restore, enhance and create productive wetland or watercourse resources;

The Applicant has stated that there will not be an irreversible or irretrievable loss of wetland resources which need to be mitigated. The proposed mitigation plan is in keeping with the Commission's practice of asking Applicant's to assess existing wetland functions and values and voluntarily provide enhancement measures such as invasive species removal and native plantings where there are opportunities to improve the wetland.

- e. the character and degree of injury to, or interference with, safety, health or the reasonable use of property which is caused or threatened by the proposed regulated activity; and

There was no testimony related to wetlands to indicate injury to safety, health or reasonable use of the property. There was speculation regarding possible septic failure and raw sewage leaving the property. Blasting may be discussed by P&Z. The Applicant has stated and Joe Canas concurs that there will be a reduction in storm water runoff volumes.

- f. impacts of the proposed regulated activity on wetlands or watercourses outside the area for which the activity is proposed and future activities associated with or reasonably related to, the proposed regulated activity which are made inevitable by the proposed regulated activity and which may have an impact on wetlands and watercourses.

Mr. Trinkhaus, speaking as an engineer, speculated that Nitrogen may be an issue to downstream tidal wetlands. Without acknowledging that there will be any significant Nitrogen discharge from the project, Mr. Fain, Professional Wetland Scientist, pointed out that freshwater wetlands provide denitrification as one of their functions. Further, the EPC does not regulate tidal wetlands.